



# AMO REPORTS 84-1

RESPONSE TO THE PROPOSED  
PROVINCIAL MINERAL  
AGGREGATE RESOURCE  
PLANNING POLICY

THE ASSOCIATION OF MUNICIPALITIES OF ONTARIO  
FEBRUARY 1984

## **ASSOCIATION OF MUNICIPALITIES OF ONTARIO**

The Association of Municipalities of Ontario, a non-partisan voluntary organization, is united to promote the values of the municipal government system and the status of the municipal level of government as a vital and essential component of the total intergovernmental framework of Ontario and Canada.

The Association acts as the collective voice of Ontario's municipal governments and is organized to accomplish through cooperation and coordination, what the majority have neither the time nor the resources to do individually.

The Association represents some six hundred (600) municipal governments throughout Ontario. The governing body is composed of some eighty (80) municipal elected and appointed officials, who in turn represent a wide-range of municipal government interest.

The following sections and affiliated municipal professional associations form an important part of the Association's structure and therefore, play an important part in its activities in terms of the Board of Directors, program and policy development:

### **Association Sections:**

- \* County and Regional Section
- \* Large Urban Section
- \* Northern Ontario Section (FONOM/NOMA)
- \* Rural (ROMA) Section
- \* Organization of Small Urban Municipalities Section

### **Association Affiliates:**

- \* Association of Municipal Clerks and Treasurers of Ontario
- \* Association of Municipal Tax Collectors of Ontario
- \* Municipal Engineers Association
- \* Ontario Municipal Administrators Association
- \* Ontario Municipal Personnel Association
- \* Ontario Municipal Social Services Association
- \* Society of Directors of Municipal Recreation of Ontario

#### **To the Municipal Clerk:**

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"AMO Reports 84-1" was submitted to the Honourable Claude Bennett, Minister of Municipal Affairs and Housing, and the Honourable Alan Pope, Minister of Natural Resources, on March 1, 1984.



## The Proposed Provincial Mineral Aggregate Resource Planning Policy

### 1. INTRODUCTION

In December of 1983 the Minister of Municipal Affairs and Housing, the Honourable Claude Bennett, and the Minister of Natural Resources, the Honourable Alan Pope, jointly transmitted a copy of the publication entitled, Mineral Aggregate Resource Planning Policy, to all municipalities in the Province of Ontario, to Provincial Ministries, agencies and commissions and to other interested parties, requesting comments. The intent of the Ministers is to issue this policy statement under section 3(1) of the Planning Act, 1983, thus proclaiming that mineral aggregates are a provincial interest. The circulation undertaken by the Ministers is meant to satisfy the requirements of section 3(2) of the Act requiring the Minister to confer with municipal officials, among others, prior to issuing a policy statement which affects municipal planning. Municipalities were given until February 3, 1984 to submit comments.

The Association of Municipalities of Ontario agreed to receive and consider each of the municipal responses and to formulate a co-ordinated municipal position. The following paper outlines AMO's concerns with respect to the proposed policy, both general and specific, and AMO's recommendations relative to the policy statement.

### 2. AMO'S RESPONSE

The Association of Municipalities of Ontario, in responding to Bill 159 (March, 1982), recognized the need for provincial policy statements to establish the extent of provincial interest in a particular matter and to provide a basis upon which the Provincial Government could intervene in municipal planning matters. AMO also recommended that policy statements should not be considered as defining "provincial interest" until they had undergone municipal circulation and review and had received Cabinet approval. As such, the Association welcomes the opportunity to comment on the proposed mineral aggregate policy.

The Provincial Government has indicated that the provision of an adequate supply of aggregates to meet demand for the foreseeable future, provided at a reasonable cost, is a provincial interest. While AMO supports the principle behind provincial policy statements as a means of defining provincial interest, the Association will use this opportunity to outline some

general concerns related to provincial policies, their relationship with official plans and zoning by-laws, provincial compliance with municipal plans which have had due regard to such policies, the interrelationship of the various provincial policies and the need to ensure that the various provincial policy statements are not used for legislative purposes. The Association also has several concerns related specifically to the proposed Mineral Aggregate Resource Planning Policy which it will outline.

## 2.1 Provincial Policy Statements and Municipal Planning

The Planning Act, 1983, Section 3(5) states that:

"In exercising any authority that affects any planning matter, the council of every municipality, ... , shall have regard to policy statements issued under subsection (1)."

This section of the Act requires that municipalities "have regard to" provincial policies when formulating official plans and zoning by-laws. The Act provides that the Provincial Cabinet may have the final authority where a municipality has not, in the opinion of the Minister of Municipal Affairs and Housing, had sufficient "regard to" the provincial policy in formulating an official plan or zoning by-law and thus may be adversely affecting the provincial interest in a particular matter. The Minister need only to notify the Ontario Municipal Board that the official plan or zoning by-law or any part thereof may adversely affect a provincial interest and Cabinet would then have the final decision-making authority on the matter.

Other provisions in the Act would permit the Minister (of Municipal Affairs and Housing) to modify the plan before approving it or to amend it after the fact to ensure that provincial interest is not adversely affected (official plans) or would permit any person or other body (conceivably another Minister) to request that the Minister refer the plan or zoning by-law or any part thereof to the Ontario Municipal Board.

There would appear to be adequate opportunities for Cabinet, the Minister of Municipal Affairs and Housing or any other Minister to ensure that a municipality has had "regard to" provincial interest, as outlined in a provincial policy, when formulating a municipal planning document. As such, once given final approval, it would seem reasonable to assume that a municipal official plan or zoning by-law should be deemed to be in compliance with provincial policies. AMO's

concern is that provincial policies will be used to defend individual development proposals which may not comply with a municipal official plan or zoning by-law. AMO believes that once municipal plans and by-laws are approved under the Planning Act, 1983 there should be no further basis for appeals based on provincial interest or provincial policies. Individual development proposals should be considered solely on the basis of the municipal official plan and zoning by-law.

Therefore AMO recommends:

1. That the appropriate amendment(s) be made to the Planning Act, 1983 and/or the proposed Mineral Aggregate Resource Planning Policy to provide that municipal official plans and/or zoning by-laws approved under the Act shall be deemed to have had due regard to provincial policies and be in compliance with such policies.

The Association has consistently stated its belief that the Provincial Government should not mandate the inclusion of any particular policy or provision in a municipal official plan or zoning by-law. As previously stated the Planning Act, 1983 provides sufficient opportunities for the Provincial Government to ensure that "provincial interests" are not being jeopardized by municipal planning actions. As such, AMO believes that policy statements should not be used as a legislative mechanism to mandate the inclusion of policies or provisions in municipal planning documents.

Therefore AMO recommends:

2. That provincial policy statements not be used as a legislative mechanism to mandate the inclusion of policies or provisions in municipal planning documents.

This matter will be addressed further in the discussion of specific concerns.

Another matter, previously addressed by AMO in responding to Bill 159 (March, 1982) and Bill 127: An Act to revise The Pits and Quarries Control Act, 1981, which the Association wishes to reiterate, is the need for provincial undertakings to comply with municipal official plans. This is critical if the municipal planning process is to maintain or gain credibility with the public. It is appropriate, given the provisions of the Planning Act, 1983 and the necessity for

municipal official plans and zoning by-laws, to "have regard to" provincial policies.

Therefore AMO recommends:

3. That Provincial Government undertakings be in compliance with applicable provincial policy statements and with municipal official plans and zoning by-laws.

A major area of concern to AMO is the interrelationship of the various provincial policies which the Association anticipates will be issued by the Provincial Government in the future. The proposed Mineral Aggregate Resource Planning Policy gives the impression that mineral aggregates are the highest priority resource in the Province and that other resources or uses should be given a lower priority when making land use decisions. The Association recognizes that mineral aggregates are an important resource that should be protected. At the same time AMO believes that there are other resources that are of equal importance to the economic and environmental stability of our Province and therefore must be considered on an equal basis. The policy should state clearly that mineral aggregates are to be considered in the overall context of municipal planning and not as an isolated resource. This would encourage approval authorities to exercise flexibility and consider all provincial policies and any unique municipal circumstances that may exist when evaluating municipal plans and by-laws.

Therefore AMO recommends:

4. That provincial policies recognize the need to assess the economic and environmental implications of any action before allocating resources for a particular use.

The Association believes that it would be appropriate and indeed, desirable, for the Minister of Municipal Affairs and Housing and the Minister of Agriculture and Food to release for review and comment the "foodlands policy", previously issued as a complementary document to the proposed aggregates policy. This would provide municipalities with the opportunity to consider both policies, equally, when developing official plan amendments related to resource allocation. Reiterating recommendation #4 above, the Association believes that these two resources (aggregates and foodlands) can not be considered in isolation of one another and must be given equal status at the Provincial level.

Resource allocation decisions should then be made at the municipal level while having due regard for provincial policies that may exist and the goals and objectives of the municipality relative to resource development.

Therefore AMO recommends:

5. That the proposed "foodlands policy" be released for review and comment.
6. That the "foodlands policy" be issued under the Planning Act, 1983 at the same time as the mineral aggregate resource planning policy.
7. That Provincial Government policies not give priority to any one resource.
8. That resource allocation decisions be made at the municipal level, through the official plan process, having due regard for Provincial Government policy statements issued under the Planning Act, 1983.

## 2.2 Proposed Provincial Aggregates Policy

In its review of the proposed provincial policy on mineral aggregates the Association has identified several instances where it believes the policy should be amended.

As previously suggested, mineral aggregate resources should be considered in the context of all other resources and land uses and should not automatically be given any priority status. The Association believes that the proposed policy should be amended to reflect this position.

Therefore AMO recommends:

9. That the phrases "in some instances" and "such as special agricultural uses" be deleted from Principle 6 of the proposed policy.
10. That the last sentence in policy 2.2 referring to incompatible land uses be deleted.

11. That the phrase, "under carefully considered circumstances where it can be shown" be deleted from the end of policy 2.3 and replaced by the phrase "where it is determined".

The existing Pits and Quarries Control Act recognizes the need for aggregate extraction sites to be rehabilitated and provides a mechanism in the Act which attempts to ensure that rehabilitation does occur. Principle 4 in the proposed policy states that the Provincial Government recognizes the need to develop policies and regulatory provisions that "ensure rehabilitation". In this regard the Association suggests that the proposed policy should be amended to illustrate the Provincial Government's strong commitment to rehabilitation.

Therefore AMO recommends:

12. That the second and fourth paragraphs of Section 1(g), Role of the Province, be amended by deleting the word "encourage" from the first line and replacing it with the word "require".
13. That policy 2.6 be amended to indicate that municipalities should include policies in their official plans that require rehabilitation of an aggregate extraction area to a use which is compatible with the long term uses permitted by the plan.

As previously indicated, the Association believes that provincial policy statements should not be used as a legislative tool to mandate the planning activities of municipalities. Section 3, Policies for Zoning By-laws, has the effect of mandating zoning provisions on municipalities that, for various reasons, may not be appropriate. The Association believes that the mechanisms exist within the Planning Act, 1983 to permit the Provincial Government to protect the provincial interest relative to aggregates where this interest may be adversely affected by a municipal zoning by-law, without the mandating of zoning provisions.

Therefore AMO recommends:

14. That Section 3 be amended by deleting the word "shall" throughout Section 3 and replacing it with the word "should".

This would be consistent with the section dealing with official plans and would provide flexibility in instances where local situations make it advisable not to zone exclusively for aggregates, as is suggested. At the same time it would continue to convey the intent of the provincial policy, that is, that municipalities recognize existing aggregate operations.

This would help in eliminating the problem being experienced by some municipalities where the Ministry of Natural Resources is requesting exclusive use zoning for all existing pits and quarries. In some instances these areas are out of production or will soon be out of production, or, are in various stages of rehabilitation. The inability of the municipality to pre-zone for future use according to long-term development proposals in the official plan could greatly impede the effectiveness of the municipal planning process.

The proposed provincial policy states that municipal by-laws must recognize mineral aggregate operations as a permitted use and not permit other uses that would be incompatible with the aggregate operation. AMO believes that a strict interpretation of this policy could result in requests that zoning by-laws prohibit all development in aggregate zones, including the construction of buildings associated with permitted uses other than aggregate extraction. As an example, the Association is concerned that agricultural uses will be permitted in aggregate zones but buildings associated with and necessary for such uses may not be permitted.

Therefore AMO recommends:

15. That the provincial policy explicitly state that in aggregate zones permitted uses may include uses which are compatible with and would not preclude future aggregate extraction and that buildings and structures associated with such uses may also be permitted.

Section 1(c), Role of the Province, indicates that the Ministry of Natural Resources, in consultation with other Ministries will prepare guidelines to assist those responsible for mineral aggregate resource planning and management with the implementation of the proposed provincial policy. Similarly, Section 1(h) indicates that the Ministry of Natural Resources, in consultation with the Ministry of Transportation and Communications, will establish procedures for the approval, operation and rehabilitation of wayside pits and quarries. The Association believes that municipal consultation with respect to these matters is necessary.

Therefore AMO recommends:

16. That Sections 1(c) and 1(h), Role of the Province, of the proposed provincial policy on mineral aggregates be amended so as to ensure municipal (AMO) consultation in the preparation of guidelines and the development of procedures related to fullscale or wayside pits and quarries.

With respect to the development of guidelines for the implementation of the policy, these guidelines, when formulated, must address the question of whether or not potential aggregate areas must be identified on official plan land use schedules (maps) and, if so, what relationship exists between the Ministry of Natural Resources District Land Use Guidelines and the aggregate areas required to be shown on municipal official plan maps.

Relative to procedures for the approval of wayside pits, AMO would reiterate its concern that such operations must comply with the applicable municipal official plan and zoning by-law.

### 3. CONCLUSION

The Association is encouraged by the efforts of the Ministers concerned to obtain input from municipalities in the development of a provincial policy for mineral aggregates. Although the Association supports the concept of provincial policy statements, it has several concerns related to their interpretation and implementation. It has taken this opportunity to present these concerns for the consideration of the Ministers directly involved and of the Cabinet.

The Association takes this opportunity to request, once again, that the Minister responsible for mineral aggregates introduce the "Aggregates Act" which would amend or replace the present Pits and Quarries Control Act. Subsequent to the introduction of the new legislation, AMO should be provided with an opportunity to consider the provisions of such a Bill and respond to them.

#### 4. SUMMARY OF RECOMMENDATIONS

1. That the appropriate amendment(s) be made to the Planning Act, 1983 and/or the proposed Mineral Aggregate Resource Planning Policy to provide that municipal official plans and/or zoning by-laws approved under the Act shall be deemed to have had due regard to provincial policies and be in compliance with such policies.
2. That provincial policy statements not be used as a legislative mechanism to mandate the inclusion of policies or provisions in municipal planning documents.
3. That Provincial Government undertakings be in compliance with applicable provincial policy statements and with municipal official plans and zoning by-laws that are deemed to be in compliance with the applicable provincial policies.
4. That provincial policies recognize the need to assess the economic and environmental implications of any action before allocating resources for a particular use.
5. That the proposed "foodlands policy" be released for review and comment.
6. That the "foodlands policy" be issued under the Planning Act, 1983 at the same time as the mineral aggregates resource planning policy.
7. That Provincial Government policies not give priority to any one resource.
8. That resource allocation decisions be made at the municipal level, through the official plan process, having due regard for Provincial Government policy statements issued under the Planning Act, 1983.
9. That the phrases "in some instances" and "such as special agricultural uses" be deleted from Principle 6 of the proposed policy.
10. That the last sentence in policy 2.2 referring to incompatible land uses, be deleted.

11. That the phrase, "under carefully considered circumstances where it can be shown" be deleted from the end of policy 2.3 and replaced by the phrase "where it is determined".
12. That the second and fourth paragraphs of Section 1(g), Role of the Province, be amended by deleting the word "encourage" from the first line and replacing it with the word "require".
13. That policy 2.6 be amended to indicate that municipalities should include policies in their official plans that require rehabilitation of an aggregate extraction area to a use which is compatible with the long term uses permitted by the plan.
14. That Section 3 be amended by deleting the word "shall" throughout Section 3 and replacing it with the word "should".
15. That the provincial policy explicitly state that in aggregate zones permitted uses may include uses which are compatible with and would not preclude future aggregate extraction and that buildings and structures associated with such uses may also be permitted.
16. That Sections 1(c) and 1(h), Role of the Province, of the proposed provincial aggregate policy be amended so as to ensure municipal (AMO) consultation in the preparation of guidelines and the development of procedures that will directly affect municipalities in their dealings with fullscale or wayside pits and quarries.

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